IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 7 OF 2007
WITH
SECOND APPEAL NO. 12 OF 2007

Shri Joaquim Gama & Ors. .... Appellants
V/s
Shri Custodio Gama @ Kistod Gama
(dec.) thro' LR's .... Respondents

Mr. S.S. Kakodkar, Advocate for the Appellants.
Mr. Michael Fernandes, Advocate for Respondents.

CORAM : N.A. BRITTO, J.

DATE : 14th DECEMBER, 2007

ORAL ORDER:

Heard learned Counsel on behalf of both parties.

2. Admittedly, the plaintiff is the owner of the property in possession surveyed under No. 82/05 of Village Cortalim. The plaintiff had filed the suit against the defendants for injunction with the allegation that the defendants were interfering with the plaintiff's property. The defendants have resisted the suit, pleading that there was a Cross in the suit property, where the annual feast was celebrated by the villagers including the plaintiff, the defendants and other co-owners of the suit property. The defendants had also pleaded a customary right to celebrate the annual feast of the said Cross.

3. Issue was framed in relation to the said claim by the trial Court and

was answered partly in favour of the plaintiff. However, it is seen that the learned first appellate Court has not at all dealt with the said right claimed by the defendants in the impugned judgment.

4. Considering the above, the judgment dated 16/09/2006 of the learned first appellate Court is hereby set aside and the matter is remanded to the learned first appellate Court with a direction to hear the parties and decide the appeals, in the light of the said plea and evidence produced.

5. Both the appeals to be disposed of by the learned first appellate Court as expeditiously as possible and in any event within a period of 3 months.

N.A. BRITTO, J.

NH/-